

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Daniel DiRocco	Team: Team # 3	CCRB Case #: 200919623	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sat, 12/26/2009 6:30 PM, Sun, 01/03/2010	Location of Incident: [REDACTED]	Precinct: 34	18 Mo. SOL 06/26/2011	EO SOL 6/26/2011	
Date/Time CV Reported Sat, 12/26/2009 9:19 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 12/26/2009 9:19 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Stephan Kroski	15842	[REDACTED]	PBMN
2. POM Theohari Koumniotes	15817	[REDACTED]	PBMN
3. An officer		[REDACTED]	PBMN
4. POM Patrick Horkan	24124	[REDACTED]	PBMN

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Miguel Rosa	18369	[REDACTED]	PBMN
2. POM Michael Checa	18954	[REDACTED]	PBMN
3. POM Warren Eng	12128	[REDACTED]	PBMN

Officer(s)	Allegation	Investigator Recommendation
A. POM Theohari Koumniotes	Abuse of Authority: Officer Theohari Koumniotes frisked § 87(2)(b) [REDACTED]	[REDACTED]
B. POM Stephan Kroski	Abuse of Authority: Officer Stephan Kroski frisked § 87(2)(b) [REDACTED]	[REDACTED]
C. POM Theohari Koumniotes	Abuse of Authority: Officer Theohari Koumniotes searched § 87(2)(b) [REDACTED]	[REDACTED]
D. POM Stephan Kroski	Abuse of Authority: Officer Stephan Kroski searched § 87(2)(b) [REDACTED]	[REDACTED]
E. POM Stephan Kroski	Discourtesy: Officer Stephan Kroski spoke obscenely to § 87(2)(b) [REDACTED]	[REDACTED]
F. POM Patrick Horkan	Abuse of Authority: Officer Patrick Horkan searched the vehicle in which § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED] were occupants.	[REDACTED]
G. An officer	Abuse of Authority: An officer frisked and searched § 87(2)(b) [REDACTED]	[REDACTED]
H. POM Patrick Horkan	Abuse of Authority: Officer Patrick Horkan frisked and searched § 87(2)(b) [REDACTED]	[REDACTED]

Case Summary

§ 87(2)(b) filed this complaint with the CCRB via the agency's call processing system on December 26, 2009 [enclosed 3A-3C]. During his interview at the CCRB on January 13, 2011, § 87(2)(b) made additional allegations stemming from a subsequent incident which included officers involved in the current case. A spin-off was created under CCRB case number 201112730 to address the second incident.

At approximately 6:30 PM on December 26, 2009, multiple officers of Manhattan North Impact Response Team responded to a radio transmission indicating the presence of a weapon at § 87(2)(b) in Manhattan. The following allegations resulted:

- **Allegation A—Abuse of Authority: Officer Theohari Koumniotes frisked** § 87(2)(b)
§ 87(2)(g)
- **Allegation B—Abuse of Authority: Officer Stephan Kroski frisked** § 87(2)(b)
§ 87(2)(g)
- **Allegation C—Abuse of Authority: Officer Theohari Koumniotes searched** § 87(2)(b)
- **Allegation D—Abuse of Authority: Officer Stephan Kroski searched** § 87(2)(b)
§ 87(2)(g)
- **Allegation E—Discourtesy: Officer Stephan Kroski spoke obscenely to** § 87(2)(b)
§ 87(2)(g)
- **Allegation F—Abuse of Authority: Officer Patrick Horkan searched the vehicle in which** § 87(2)(b) **and** § 87(2)(b) **were occupants.**
§ 87(2)(g)
- **Allegation G—Abuse of Authority: An officer frisked and searched** § 87(2)(b)
- **Abuse of Authority: Officer Patrick Horkan frisked and searched** § 87(2)(b) **and** § 87(2)(b) **did not cooperate with the CCRB to provide a sworn statement.** § 87(2)(g)

This case was originally assigned to Investigator Noah Weston. Investigator Weston conducted all interviews. Upon Investigator Weston's departure from the agency, the case was reassigned to the undersigned investigator on May 13, 2011.

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b)

CCRB Testimony

§ 87(2)(b) provided a telephone statement to the CCRB on January 7, 2010 [enclosed 4] and appeared at the CCRB to provide a sworn statement on January 13, 2010 [enclosed 5A-5D]. Both statements were generally consistent and are summarized below.

At approximately 6:30 PM on December 26, 2009, § 87(2)(b)'s cousin, § 87(2)(b) called 911 to report that a family member had threatened his father with a weapon inside of § 87(2)(b) in Manhattan. § 87(2)(b) and their cousins, § 87(2)(b) and § 87(2)(b) subsequently exited the building and entered § 87(2)(b)'s vehicle, which was parked on the street in front of a parking meter near the building's entrance. § 87(2)(b) the driver, pulled the vehicle out of its parking spot and moved it to a nearby fire hydrant. While doing so, § 87(2)(b) noticed an unidentified individual standing in front of the entrance to the building.

Soon after, three marked NYPD vans, holding, in total, approximately ten uniformed officers, arrived at the location. Multiple officers initially approached the unidentified individual. § 87(2)(b) could not attest to the content of any discussion between the officers and this individual.

Moments later, these officers surrounded § 87(2)(b)'s car. An officer, whom § 87(2)(b) described as a uniformed white male with low-cut or Caesar-styled hair [identified via investigation as Officer Theohari Koumniotes then of Manhattan North Impact Response Team], stood next to § 87(2)(b) who was still seated in the driver's seat. Officer Koumniotes knocked on § 87(2)(b)'s window. § 87(2)(b) lowered the window and provided his identification to Officer Koumniotes upon request. Officer Koumniotes said that the unidentified individual had told the officers that he knew § 87(2)(b) informed Officer Koumniotes that he could not clearly see this individual and, therefore, could not determine if he knew this individual. Multiple officers, whom § 87(2)(b) could not describe, then reached into the vehicle, opened the car doors, and physically pulled all four of the occupants out to the ground.

Once § 87(2)(b) was outside of the vehicle, Officer Koumniotes performed a frisk of his person and then searched § 87(2)(b)'s pockets. § 87(2)(b) could not recall which pockets were searched. He had his wallet, 80 dollars, keys, and, possibly, a pack of cigarettes, in his pockets. § 87(2)(b) could not recall in which pocket or pockets these items were stored nor could he recall if any of these items were removed.

While § 87(2)(b) was engaged with Officer Koumniotes, an officer, whom § 87(2)(b) also described as a uniformed white male with low-cut or Caesar-styled hair [identified via investigation as Officer Patrick Horkan then of Manhattan North Impact Response Team], performed a frisk and then a search of § 87(2)(b). Officer Horkan recovered a bag of marijuana and immediately placed § 87(2)(b) in handcuffs.

At this point, an unidentified officer escorted § 87(2)(b) to the rear of the vehicle where he sat on the vehicle's back bumper. From there, § 87(2)(b) observed Officer Horkan search his vehicle, including the glove compartment, the door consoles, the compartment between the front seats, and the trunk.

As a result of the incident, Officer Koumniotes issued § 87(2)(b) two summonses [for parking in front of a fire hydrant and for disorderly conduct]. § 87(2)(b) was arrested for possession of marijuana and removed from the location.

Victim: § 87(2)(b)

- § 87(2)(b)

CCRB Testimony

§ 87(2)(b) provided a telephone statement to the CCRB on August 9, 2010 [enclosed 6] and appeared at the CCRB to provide a sworn statement on August 19, 2010 [enclosed 7A-7D]. § 87(2)(g)

§ 87(2)(b) confirmed that multiple officers interacted with an unidentified civilian prior to approaching § 87(2)(b)'s vehicle, which was parked in front of a fire hydrant. However, § 87(2)(b) could only attest to his subsequent interaction with Officer Stephan Kroski, then of Manhattan North Impact Response Team, whom he identified by name.

As the officers surrounded § 87(2)(b)'s vehicle, Officer Kroski approached § 87(2)(b) [seated in the rear driver's seat]. Officer Kroski instructed § 87(2)(b) to lower his window. § 87(2)(b) was unable to do so because the window was locked. Officer Kroski then yelled: "Lower your fucking window" multiple times. At that point, § 87(2)(b) told Officer Kroski that the window was locked. § 87(2)(b) and Officer Kroski were able to hear one another because § 87(2)(b)'s car window was open.

Following this exchange, Officer Kroski ordered § 87(2)(b) to open the car door. § 87(2)(b) opened the car door slightly. In the process, the car door made contact with Officer Kroski's leg. Officer Kroski immediately pulled § 87(2)(b) out of the vehicle by his shirt causing him to fall to the ground. Officer Kroski picked up § 87(2)(b) placed him on the hood of the car, and ordered § 87(2)(b) to put his hands on the vehicle. § 87(2)(b) complied. Officer Kroski patted down § 87(2)(b)'s body and then placed his hands inside of § 87(2)(b)'s pants pockets removing § 87(2)(b)'s wallet and keys, and throwing them into the car. § 87(2)(b) could not recall if he had anything else in his pants pockets.

After the alleged frisk and search of § 87(2)(b)'s person, Officer Kroski said to § 87(2)(b) "Where is your fucking ID?" § 87(2)(b) stated that it was in his wallet. Officer Kroski asked: "Where is your fucking wallet?" § 87(2)(b) indicated to Officer Kroski that he had just thrown it into the car. § 87(2)(b) then informed Officer Kroski that he had not granted him permission to search his person. In response, Officer Kroski called § 87(2)(b) a "smart ass" and told him to "shut the fuck up."

At some point, it is unclear when, by whom, or how, multiple officers took each of the vehicle's occupants' identifications. When Officer Kroski returned § 87(2)(b)'s identification, he asked § 87(2)(b) what he was studying. § 87(2)(b) stated that he was studying to become a court officer. Officer Kroski said: "With that fucking attitude, you are going to go nowhere in life."

It should be noted that § 87(2)(b) did not see any officer search the car. Officer Kroski issued § 87(2)(b) a summons for disorderly conduct.

Victim: § 87(2)(b)

• § 87(2)(b)

CCRB Telephone Statements

§ 87(2)(b) provided two telephone statements to the CCRB on August 9, 2010 [enclosed 8] and August 13, 2010 [enclosed 9]. § 87(2)(g)

Multiple unidentified officers removed § 87(2)(b) and § 87(2)(b) from the vehicle and forcefully shoved them against a wall. § 87(2)(b) and § 87(2)(b) immediately exited the vehicle of their own volition. § 87(2)(b) did not witness any additional interaction between the officers and § 87(2)(b) and § 87(2)(b).

While § 87(2)(b) was outside of the vehicle, an unidentified officer, whom § 87(2)(b) described as a uniformed white male standing at 6'0" tall, bald or short hair, with a stocky build and aged in his thirties, patted his body down including his inner-thigh area. The officer ordered § 87(2)(b) to remove the contents of his pants pockets, which § 87(2)(b) did. The officer then placed his hands inside of these pockets. At approximately the same time, an officer, whom § 87(2)(b) described as § 87(2)(b) tall identified via investigation as Officer Patrick Horkan, then of Manhattan North Impact Response Team, performed the same procedure on § 87(2)(b).

While being frisked, § 87(2)(b) dropped an unspecified quantity of marijuana for which he was arrested. § 87(2)(b) was not arrested or summonsed as a result of the encounter.

Attempts to Contact Civilians

Following a series of telephone calls and letters to § 87(2)(b) between June 8, 2011 and September 1, 2011, § 87(2)(b) called and scheduled an appointment, for which he ultimately failed to appear. Following additional telephone calls to and correspondence to § 87(2)(b) has not contacted the undersigned to reschedule this appointment. On October 28, 2011, the undersigned queried the New York City Department of Correction Inmate Service Look-up website which revealed that § 87(2)(b) is not currently incarcerated nor was he incarcerated while the undersigned attempted to reach him [enclosed 40A].

Investigator Weston obtained a telephone statement from § 87(2)(b) on August 13, 2010. § 87(2)(b) who declined to appear at the CCRB, informed Investigator Weston that he would sign the verification form, have it notarized, and return it to the CCRB. Following additional telephone calls to and correspondence to § 87(2)(b) between August 13, 2010 and September 24, 2010, § 87(2)(b) failed to return the verification form. A search of the New York City Department of Correction Inmate Service Look-up website performed on October 28, 2011, revealed that § 87(2)(b) is not currently incarcerated nor was he incarcerated while Investigator Weston attempted to reach him [enclosed 40B].

NYPD Statements

Subject Officer: OFFICER STEPHAN KROSKI

- § 87(2)(b)
- On December 26, 2009, Officer Kroski, then of Manhattan North Impact Response Team, was assigned to Foot Posts § 87(2)(b) within the 34th Precinct. He was dressed in uniform and partnered with Officer Theohari Koumniotes of the same command. Officer Kroski worked from 2:00 PM to 11:05 PM.

Stop, Question, and Frisk Report

Officer Kroski completed a Stop, Question, and Frisk Report [enclosed 10A-10B] for § 87(2)(b) on December 26, 2009. The report indicates that § 87(2)(b) was stopped because he was suspected of criminal possession of a weapon. § 87(2)(b) was also frisked. The circumstances that led to the stop and frisk were furtive movements, a report from a victim/witness/officer, evasive, false, or inconsistent responses to officers' questions, and refusal to comply with officers' directions. § 87(2)(b) was searched due to the presence of a hard object on his person. § 87(2)(b) was ultimately issued a summons for disorderly conduct.

Memo Book Entries [enclosed 12A-12C]

At 6:45 PM on December 26, 2009, Officer Kroski noted a 10-39 [other crime in progress] in front of § 87(2)(b). There was a threat to life and a possible weapon at the location. The perpetrator [the unidentified individual encountered in front of the building's entrance] fit the description and said that the boys were in the car § 87(2)(b)'s car]. Officer Kroski approached the vehicle. The perpetrator in the back [identified via investigation as § 87(2)(b)] refused to follow instructions. § 87(2)(b) opened the car door and hit Officer Kroski in the leg. Officer Kroski pulled § 87(2)(b) out of the car and frisked him for safety.

CCRB Testimony

Officer Kroski testified at the CCRB on August 31, 2010 [enclosed 14A-14B]. His statement is summarized below.

At approximately 6:30 PM on December 26, 2009, Officer Kroski and Officer Koumniotes responded to a radio transmission involving a possible weapon at § 87(2)(b) in Manhattan. Officer Kroski acknowledged that the radio transmission provided a description of the perpetrator; however, he could not recall this description at the time of his interview.

When Officer Kroski and Officer Koumniotes arrived, they stopped and frisked an unidentified individual standing in front of § 87(2)(b). They did so because a possible weapon was noted on the radio run. Following the frisk, this individual said to Officer Kroski and Officer Koumniotes: "It's not me. I called the cops. It's the guys sitting in the car in front of the fire hydrant."

Officer Kroski and Officer Koumniotes, along with three or four additional officers whom Officer Kroski could not identify, approached and surrounded the vehicle. Officer Kroski positioned himself next to the rear driver's side. He could not attest to the specific locations of the other officers relative to the vehicle. The car windows were closed and Officer Kroski could not see inside. All of the officers surrounding the vehicle, including Officer Kroski, instructed the occupants to roll down the windows multiple times. The occupants did not comply.

Soon after, the individual in the rear driver's side seat, whom Officer Kroski identified by name as § 87(2)(b) opened the car door hitting Officer Kroski's leg with the door. Officer Kroski immediately removed § 87(2)(b) from the vicinity of the vehicle and performed a frisk of § 87(2)(b)'s person to ensure his safety. Officer Kroski described § 87(2)(b) as aggressive and combative. § 87(2)(b) informed Officer Kroski that he was a § 87(2)(b) and that Officer Kroski was not following proper protocol. Officer Kroski eventually issued § 87(2)(b) a summons for disorderly conduct.

Officer Kroski could not recall whether or not he spoke discourteously to § 87(2)(b). He observed other officers frisk each of the vehicle's occupants; however, he could not recall which officers performed the frisks, nor could he recall exactly where and when the frisks took place. Officer Kroski could not recall if he or any other officer performed a search of the occupants' persons. Additionally, Officer Kroski could not recall if § 87(2)(b)'s vehicle was searched.

Subject Officer: OFFICER PATRICK HORKAN

- § 87(2)(b)
- *On December 26, 2009, Officer Horkan, then of Manhattan North Impact Response Team, was assigned to Foot Posts § 87(2)(b) within the 34th Precinct. He was dressed in uniform and partnered with Officer Michael Rosa of the same command. Officer Horkan worked from 2:30 PM to 11:05 PM.*

Memo Book Entries [enclosed 15A-15D]

At 7:01 PM on December 26, 2009, Officer Horkan noted one under [one individual arrested] on the corner of § 87(2)(b) § 87(2)(b).
§ 87(2)(b)

CCRB Testimony

Officer Horkan testified at the CCRB on August 12, 2010 [enclosed 17A-17B] . § 87(2)(g)

Officer Horkan confirmed receipt of a gun run via radio transmission on December 26, 2009. He could not provide additional details. Officer Horkan also confirmed that multiple officers [identified via investigation as Officer Kroski and Officer Koumniotes] stopped an unidentified individual exiting the building. He could not recall if or how the officers interacted with the individual.

Immediately following the above, Officer Horkan, Officer Kroski, Officer Koumniotes, and multiple unidentified officers approached § 87(2)(b)'s illegally parked vehicle. Officer Horkan confirmed that the occupants initially refused to comply with the officers' commands to roll down their windows.

Officer Horkan stood next to the front driver's side of the vehicle. He noticed an individual, whom he identified by name as § 87(2)(b) reaching under the front passenger's seat. Since this was a gun run, Officer Horkan believed § 87(2)(b) could have been reaching for a weapon. Officer Horkan also noticed an individual, identified via investigation as § 87(2)(b) exiting the vehicle via the rear passenger door and hitting an officer [identified via investigation as Officer Kroski] in the leg with the door in the process.

Officer Horkan then asked § 87(2)(b) to step out of the vehicle. § 87(2)(b) complied. Officer Horkan performed a quick pat down of § 87(2)(b)'s body. As Officer

Horkan performed the pat-down, he noticed a bag of marijuana attached to § 87(2)(b)'s right shoe in plain-view. Officer Horkan immediately placed § 87(2)(b) under arrest.

It should be noted that Officer Horkan searched under the front passenger's seat of the car where § 87(2)(b) had been seated. He could not specify when he did so.

Subject Officer: OFFICER THEOHARI KOUMNIOTES

- § 87(2)(b)
- *On December 26, 2009, Officer Koumniotes, then of Manhattan North Impact Response Team, was assigned to Foot Posts § 87(2)(b) within the 34th Precinct. He was dressed in uniform and partnered with Officer Stephan Kroski of the same command. Officer Koumniotes worked from 2:30 PM to 11:05 PM.*

Memo Book Entries [enclosed 20A-20C]

At 6:45 PM, Officer Koumniotes noted a gun run in front of § 87(2)(b). Four males were stopped in front of the location. The four males refused to step out of the vehicle. At 7:00 PM, Officer Koumniotes issued two summonses.

CCRB Testimony

Officer Koumniotes testified at the CCRB on August 10, 2010 [enclosed 22A-22B]. His statement is summarized below.

Officer Koumniotes could only recall Officer Kroski and Officer Horkan being present for the incident. He stated that the officers' attention was, for a reason that he could not recall, drawn to § 87(2)(b)'s vehicle. Officer Koumniotes confirmed that all four occupants were frisked. Officer Koumniotes could not recall if he frisked any of the occupants nor could he identify the officers who performed the frisks. He could not recall if anyone was searched, if discourteous language was used, or if § 87(2)(b)'s car was searched. During his CCRB statement, Officer Koumniotes was presented with a photocopy of § 87(2)(b)'s New York State identification; however, this did not assist his recollection of the incident.

Additional Officers Interviewed

The CCRB obtained statements from Officer Miguel Rosa [enclosed 25A-25B] and Officer Michael Checa [enclosed 27A-27B] each of Manhattan North Impact Response Team at the time of incident. Despite being shown a photocopy of § 87(2)(b)'s New York State photo identification and being briefed on the alleged nature of the incidents, neither officer could provide salient accounts of what transpired.

The SPRINT report [enclosed 30A-30C] generated for the incident notes a 10-93Q [other report prepared] by 34ST1 [identified via roll call as Sergeant Patrick Duffy of the 34th Precinct]. However, Sergeant Duffy's arrival is not indicated on the SPRINT report.

Throughout the course of much of the investigation, Sergeant Duffy was on leave after having been injured in the line of duty. His operator on December 26, 2009, Officer Warren Eng of the 34th Precinct, was interviewed at the CCRB [enclosed 29A-29B]. Officer Eng had no entries in his memo book regarding the incident [enclosed 28A-28C] and could not recall having been present after viewing a photocopy of § 87(2)(b)'s New York State identification and after being briefed on the alleged nature of the encounter.

In addition to the above, none of the officers who appeared at the CCRB testified to having seen Sergeant Duffy at the location. Furthermore, the officers did not acknowledge having received any supervisory instruction from a ranking officer, let alone Sergeant Duffy. Consequently, the investigation was concluded without obtaining a statement from Sergeant Duffy.

NYPD Documents

SPRINT Report Number § 87(2)(b) [enclosed 30A-30C]

At § 87(2)(b) on § 87(2)(b), § 87(2)(b) called 911 and reported that a Hispanic male perpetrator wearing a dark hoodie was reported as potentially armed. The perpetrator threatened to shoot individuals at § 87(2)(b) in Manhattan. The perpetrator was also smoking marijuana. At 6:41 PM, officers were advised to “arrive alive.” At 6:43 PM, § 87(2)(b) reported that the perpetrator was on the fifth floor of the building en route to the roof. Between 6:44 PM and 6:46 PM, multiple sectors arrived at the location.

Investigator Weston requested the communications recording from the NYPD on January 31, 2011. However, due to the time elapsed following the incident, the Internal Affairs Bureau (IAB) discarded the communications recording corresponding to the above SPRINT report rendering it unavailable to the investigation.

Stop, Question, and Frisk (UF-250) Log [enclosed 31]

The NYPD’s Monitoring and Analysis Section (MAS) provided the CCRB with a computer-generated UF-250 log for the 34th Precinct on December 26, 2009. The log notes that Officer Kroski stopped § 87(2)(b). The log contains no additional entries made by any of the officers who appeared at the CCRB.

Investigator Weston did not request the handwritten UF-250 log or reports. Given the time elapsed from the incident date to the time of the case reassignment, these handwritten documents were no longer maintained on file with the NYPD and were, therefore, not available to the investigation.

Summons/Arrest for Incident and Disposition [enclosed 35A-35B, 36A-36C, & 37]

- § 87(2)(b)
[REDACTED]
- § 87(2)(b)
[REDACTED]
- § 87(2)(b)
[REDACTED]
- § 87(2)(b)
[REDACTED]
- § 87(2)(b)
[REDACTED]

Status of Civil Proceedings

- § 87(2)(b) and § 87(2)(b) have not filed a Notice of Claim with the City of New York as of October 28, 2011 with regard to the incidents [enclosed 39A-39B].

Civilians Criminal Histories [enclosed 38A-38Y]

- As of October 28, 2011, Office of Court Administration records reveal no criminal convictions for § 87(2)(b) and § 87(2)(b)
- As of October 28, 2011, Office of Court Administration records reveal the following criminal convictions for § 87(2)(b)
 - § 87(2)(b)
 - § 87(2)(b)

Civilians CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) and § 87(2)(b) have never filed a complaint with the CCRB [enclosed 2A-2D].

Subject Officers CCRB Histories

- Officer Stephan Kroski, Officer Theohari Koumniotes, and Officer Patrick Horkan have all been members of the service for three years. There are no substantiated CCRB allegations against any of these officers [enclosed 1A-1D]

Conclusion

Investigative Findings and Recommendations

Identification of Subject Officers

§ 87(2)(b) alleged that the officer who issued him two summonses on December 26, 2009, identified via investigation as Officer Theohari Koumniotes, frisked and searched his person. § 87(2)(b) could only describe this officer, amongst others, as a uniformed white male with low-cut or Caesar-styled hair. Officer Koumniotes fits this general description. In addition, Officer Koumniotes acknowledged having surrounded the vehicle and having issued § 87(2)(b) the aforementioned summonses.

Officer Kroski acknowledged having interacted with § 87(2)(b) and Officer Horkan acknowledged having interacted with § 87(2)(b)

Since § 87(2)(b) did not cooperate with the CCRB, the investigation could not identify the subject officer for allegation G. Therefore, allegation G is pleaded against “An officer” of Manhattan North Impact Response Team.

Allegations Not Pleased

§ 87(2)(b) was issued summons number § 87(2)(b) on December 26, 2009 by Officer Theohari Koumniotes for parking in front of a fire hydrant. As such, a vehicle stop is not pleaded.

While Officer Kroski admitted that he and Officer Koumniotes frisked the unidentified individual in front of § 87(2)(b) none of the civilians who testified at the CCRB

raised this allegation. The individual himself did not file a complaint with the CCRB. Since § 87(2)(b) could not identify this individual and all available police documentation does not provide the individual's name or contact information, the CCRB was unable to establish contact with him. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) alleged that Officer Kroski initially told him to "lower [his] fucking window." § 87(2)(g)

Allegation A—Abuse of Authority: Officer Theohari Koumniotes frisked § 87(2)(b)

Allegation B—Abuse of Authority: Officer Stephan Kroski frisked § 87(2)(b)

§ 87(2)(b) alleged that an officer, identified via investigation as Officer Koumniotes, frisked him. § 87(2)(b) alleged that Officer Kroski frisked him, which Officer Kroski confirmed. Officer Koumniotes confirmed that all four of the vehicle's occupants were frisked but he could not recall whether or not he frisked any of these individuals.

According to People v. Larkins, 116 A.D.2d 194 (4th Department, 1986) [enclosed BA-BD], if the police possess reliable information that one or more of the occupants of a vehicle might possess a weapon or that there are weapons in the vehicle, a frisk would be justified as a self-protective measure.

On the Stop, Question, and Frisk Report that Officer Kroski completed for § 87(2)(b) he noted that § 87(2)(b) was stopped and frisked based on the following factors: § 87(2)(b) was suspected of possessing a weapon, § 87(2)(b) made furtive movements, there was a report from a victim/witness/officer, § 87(2)(b) offered evasive, false, or inconsistent responses to officers' questions, and he refused to comply with officers' directions.

During his CCRB testimony, Officer Kroski § 87(2)(g)

§ 87(2)(b) He claimed to have been acting in the interest of safety as the officers were responding to a "gun run." When the officers arrived after having stopped and frisked an individual in front of the building, that individual stated: "It's not me. I called the cops. It's the guys sitting in front of the fire hydrant." Moreover, upon the officers' approach, the occupants did not comply with multiple directives to roll down the car windows.

While at the CCRB, Officer Koumniotes reiterated that the officers responded to a "gun run" and that the occupants defied police instruction. However, he could not recall what exactly led him and his fellow officers to § 87(2)(b)'s vehicle.

§ 87(2)(g)

While Officer Koumniotes and Officer Kroski confirmed the officers' response to a "gun run," neither could testify to the specifics of the radio transmission. The officers could not recall if a race or gender was provided. They could not recall if the transmission included a physical description of the perpetrator, or the color or type of attire in which the perpetrator was dressed. They could not recall if the transmission noted any movement of the perpetrator near or within the location where the reported dispute occurred.

According to the SPRINT report, the perpetrator was a Hispanic male wearing a dark hoodie who threatened to discharge a firearm. Approximately one minute prior to the officers' arrival, the perpetrator was making his way to the roof of the building.

Without the communications recording, the investigation could not determine the veracity of the notations made on the SPRINT report. The investigation also could not determine what exactly the officers heard on the transmission and whether or not additional details were provided, which may have given the officers sufficient reason to frisk § 87(2)(b) and § 87(2)(b).

§ 87(2)(g)
§ 87(2)(g) Officer Kroski claimed that this individual directed him, Officer Koumniotes, and other officers to § 87(2)(b)'s vehicle by indicating that the perpetrators were inside of the car. § 87(2)(b) and Officer Horkan witnessed multiple officers interacting with the unidentified male. The officers, according to § 87(2)(b) and Officer Horkan, then approached § 87(2)(b)'s vehicle.

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Allegation C—Abuse of Authority: Officer Theohari Koumniotes searched § 87(2)(b)

Allegation D—Abuse of Authority: Officer Stephan Kroski searched § 87(2)(b)

§ 87(2)(b) alleged that an officer, identified via investigation as Officer Koumniotes, searched his pockets following a frisk. § 87(2)(b) alleged the same against Officer Kroski and claimed that Officer Kroski removed his wallet and keys.

On the Stop, Question, and Frisk Report that Officer Kroski prepared for § 87(2)(b) he indicated that § 87(2)(b) was searched due to the presence of a hard object. During their CCRB testimonies, neither Officer Koumniotes nor Officer Kroski could recall having searched any of the vehicle's occupants. In addition, Officer Kroski could not recall what, if any, hard object he felt on § 87(2)(b)'s person.

As per *People v. Davenport*, 9 A.D.3d 316 (1st Dept. 2004) [enclosed CA-CB], a search of an individual's pocket(s) following a lawful frisk is permissible only if an officer feels, via the frisk, an object that he/she reasonably suspects to be a weapon.

§ 87(2)(b) claimed to have his wallet, 80 dollars, keys, and, possibly, a pack of cigarettes in his pockets. § 87(2)(b) could not recall whether or not his pockets held anything else besides his keys and wallet. Furthermore, neither § 87(2)(b) nor § 87(2)(b) could attest to which pocket or pockets specifically held the aforementioned items nor could either attest to the shape that these objects formed within their respective pockets.

As verified by the Stop, Question, and Frisk Report, Officer Kroski searched § 87(2)(b)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation E—Discourtesy: Officer Stephan Kroski spoke obscenely to § 87(2)(b)

§ 87(2)(b) alleged that Officer Kroski said the following to him: “Where is your fucking ID?” “Where is your fucking wallet?” In addition, § 87(2)(b) alleged that Officer Kroski called him a “smart ass” and told him to “shut the fuck up” when he questioned why Officer Kroski searched him. § 87(2)(b) also alleged that after he informed Officer Kroski that he was studying to become a court officer, Officer Kroski said: “with that fucking attitude, you are going to go nowhere in life.”

Officer Kroski could not recall whether or not he used profanity while speaking with § 87(2)(b) during the encounter; however, he did acknowledge having conversed with § 87(2)(b) regarding § 87(2)(b)'s schooling and § 87(2)(b)'s plans to become a police officer. None of the civilians or officers who testified at the CCRB corroborated the utterance of the alleged profane remarks. § 87(2)(g)

Allegation F—Abuse of Authority: Officer Patrick Horkan searched the vehicle in which § 87(2)(b) **and** § 87(2)(b) **were** **occupants.**

§ 87(2)(b) alleged that following the alleged frisk and search of § 87(2)(b) an officer, identified via investigation as Officer Patrick Horkan, searched the glove compartment, the door consoles, the compartment between the front seats, and the trunk of his vehicle. Officer Horkan admitted to having searched only under the front passenger's seat of the vehicle where § 87(2)(b) had been seated. Officer Horkan did not specify when, during the incident, he performed this search.

According to Barry Kamins' New York Search and Seizure (see Barry Kamins' New York Search and Seizure, 2011 Edition, pages 5-98 to 5-105) [enclosed AC-AJ], if a search is conducted incident to an arrest, it is confined to an area known as the ‘grabbable area,’ and is limited to the space within the defendant's immediate reach.

§ 87(2)(g)

§ 87(2)(b) Officer Horkan could not recall whether or not the search occurred prior to or after § 87(2)(b)'s arrest. Furthermore, § 87(2)(b) alleged that Officer Horkan searched well beyond the area accessible only to § 87(2)(b)

§ 87(2)(g)

Allegation G—Abuse of Authority: An officer frisked and searched § 87(2)(b)

Abuse of Authority: Officer Patrick Horkan frisked and searched § 87(2)(b)

§ 87(2)(b) alleged that an unidentified male officer performed a frisk and then a search of his person immediately after he voluntarily exited § 87(2)(b)'s vehicle. Neither § 87(2)(b) nor § 87(2)(b) could corroborate § 87(2)(b)'s claim that he was frisked and searched, nor could either identify one or more of the officers who primarily interacted with § 87(2)(b).

§ 87(2)(b) and § 87(2)(b) alleged that an officer, identified via investigation as Officer Horkan, performed a frisk and then a search of § 87(2)(b)'s person. § 87(2)(b) stated that while Officer Horkan frisked § 87(2)(b), § 87(2)(b) dropped an unspecified amount of marijuana. Officer Horkan testified that he frisked § 87(2)(b). While doing so, Officer Horkan observed a bag of marijuana attached to § 87(2)(b)'s shoe in plain-view. Officer Horkan subsequently placed § 87(2)(b) under arrest. Officer Horkan could not recall whether or not he searched § 87(2)(b)'s person.

In an effort to obtain sworn statements from § 87(2)(b) and § 87(2)(b), the CCRB exhausted all contact attempts. However, § 87(2)(b) and § 87(2)(b) did not cooperate with the investigation. § 87(2)(g)

Team: _____

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Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date